IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11-10 -2007

Coram :

The Hon'ble Mr. Justice ELIPE DHARMA RAO
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.18958 of 2007

P.Subramaniyan … Petitioner

vs.

1. The Union of India
   Rep. by The Chairman
   Ordnance Factories Board,
   Kolkatta.

2. The General Manager
   HAPP, Trichy – 620 025.

3. A.B.Ravikumar

4. T.K.Sreekumar

5. The Registrar
   Central Administrative Tribunal,
   Chennai – 600 104. .. Respondents

Writ Petition, seeking certiorari is filed by the petitioner, under Article 226 of the Constitution of India, to call for the records relating to the order of the fifth respondent made in O.A.No.161 of 2006, dated 31.10.2006 and to quash the same.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.P.Wilson, Asst. Solicitor General for R1
Mr.Parthiban for M/s. Paul & Paul for R4

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O R D E R

S.TAMILVANAN, J

This writ petition is preferred by the petitioner against the order, dated 31.10.2006 made in O.A.No.161 of 2006 by the fifth respondent herein, whereby setting aside the order dated 20.12.2005 of the respondents 1 and 2 and also directed them to refix the seniority of the fourth respondent above the petitioner and the third respondent herein.

2. It is not in dispute that the petitioner herein was appointed as Chargeman Gr.II (T) on 08.08.2000, under Limited Departmental Competitive Examination (LDCE) along with the fourth respondent, though, he was already appointed as Chargeman Grade II Technical (CM Gr.II (T)) with effect from 12.04.2000 under Direct Recruitment quota. The third respondent was appointed as Chargeman Gr.II (T) under LDCE quota with effect from 09.08.2000, on the ground that the fourth respondent had not given his willingness for the LDCE quota. However, the petitioner and the third respondent were placed seniors above the fourth respondent stating that he was considered only for the Direct recruitment quota, though he was selected under Direct recruitment as well as for LDCE quota and was already holding the post of Chargeman Gr.II (T) with effect from 12.04.2000, stating that he had not submitted his willingness to accept the offer of appointment in LDCE quota.

3. Per contra, the fourth respondent herein has stated in the application filed before the Central Administrative Tribunal that he had submitted his representation on 08.08.2000 itself and also reminder before the authorities to fix his seniority above the petitioner and the third respondent. According to him, as there had been no response from the respondents 1 and 2, subsequently, he filed the application before the Central Administrative Tribunal, Madras Bench at Chennai.

4. It is seen that the Central Administrative Tribunal has framed two important questions for consideration of the Original Application, which are as follows :

1. Whether the applicant was given sufficient time to respond to the offer of appointment dated 08.08.2000 ? and
2. Whether the applicant can be denied the seniority in the facts and circumstances of the case ?

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5. The Tribunal, based on the evidence and arguments advanced by both sides has held both the points for consideration in favour of the fourth respondent and thereby allowed the application, setting aside the order of the respondents 1 and 2, directed them to refix the seniority of the fourth respondent as Chargeman Gr.II (T) above the petitioner and third respondent herein.

6. It is an admitted fact that the fourth respondent was appointed on 12.04.2000, as he was already selected for the Direct Recruitment quota. Similarly, it is not in dispute that both the petitioner and the fourth respondent herein were permitted by the authorities to attend the exam for Direct Recruitment as well as LDCE quota, which were conducted during January 2000 and February 2000 respectively and the fourth respondent has successfully got through in both the examinations, though the petitioner herein was selected only in the Examination, that was conducted for LDCE quota and appointed on 08.08.2000.

7. In the reply statement filed by respondents 1 and 2 before the Tribunal, the above fact has been clearly admitted. As per the reply statement, the fourth respondent could not be considered for LDCE quota, since he had failed to accept the offer made by the respondents 1 and 2 by reporting to the General Manager, Heavy Alloy Penetrator Project, Trichy on 08.08.2000 at 7.30 hrs. In other words, the fourth respondent was directed to appear before the said General Manager on 08.08.2000 at 7.30 a.m to submit his willingness. It is very strange to note that the fourth respondent was given the offer to submit his willingness at 7.30 a.m on 08.08.2000, though the order itself was issued only on 08.08.2000. There can be no rationale or justification in directing the fourth respondent to appear on 08.08.2000 at 7.30 a.m before the General Manager, Heavy Alloy Penetrator Project, Trichy, since the order itself had been issued on the said date.

8. According to the fourth respondent, he submitted his request on the same day (08.08.2000) to the General Manager to consider for the quota, which would provide him a higher seniority in the cadre of Chargeman Gr.II (T), since he was not aware of the Quota Rota rule maintained by the Department and how the seniority could be fixed between the appointees under the LDCE and direct recruitment.

9. As found by the Tribunal, the rule position for fixation of seniority in that year is that the appointees of LDCE quota to be placed above direct recruits, as the LDCE selection process is stated as a Fast Track Promotion.

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10. As stated by the respondents 1 and 2 in their counter, in view of SRO, recruitment in Chargeman Gr.II (T), is being made 50% by promotion, 25% by LDCE and remaining 25% by direct recruitment and the seniority has to be fixed as per Quota Rota rule. As per the Quota Rota rule, the seniority position of the promotees, LDCE and Direct recruits in the cadre of Chargeman Gr.II (T) in deciding the seniority was as under:

1. Promotion
2. LDCE
3. Direct recruit.

11. It has been categorically admitted by the respondents 1 and 2 in their reply statement that both the fourth respondent and the petitioner herein were selected and offered appointment in the LDCE quota, accordingly, the fourth respondent herein was offered appointment for LDCE quota along with the petitioner herein with a direction that if he wish to accept the offer of appointment, he should report the same to the General Manager, HAPP, on 08.08.2000 at 7.30 a.m. As we have discussed earlier, the above said option was given to the fourth respondent vide Letter No.14168/VI G/HAPP/2000, dated 08.08.2000. Though the order itself is dated 08.08.2000, whereby the petitioner was directed to report before the General Manager for submitting his willingness on the same day at 7.30 a.m, which is quite improper and unreasonable.

12. According to the respondents 1 and 2, the fourth respondent herein did not submitted his offer before the General Manager, as directed, hence, the third respondent herein was appointed with effect from 09.08.2000, i.e., on the next day. It is also seen that the earlier offer made to the fourth respondent was neither cancelled nor intimated about the same to the fourth respondent.

13. The learned counsel appearing for the fourth respondent would contend that on 08.08.2000 itself the fourth respondent had submitted his representation before the concerned authority to fix his seniority in the quota, which would be more beneficial to him, since he was selected for both LDCE and Direct recruitment. According to him, even for the LDCE quota, he was ranking number one, out of the three candidates, which was not disputed.

14. Even in the reply statement filed by the respondents 1 and 2, at paragraph 9, it has been clearly stated as under, " Against two vacancies of Chargeman Gr.II (T) in LDCE quota, the applicant and the third respondent were offered appointment order." The applicant therein is the fourth respondent herein and the third respondent therein is the petitioner herein.

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15. It is quite apparent as per the reply statement of the respondents 1 and 2 that there were only two vacancies in the LDCE quota and one vacancy for the direct recruit. The fourth respondent was selected for both LDCE and Direct recruitment. The petitioner herein though appeared for both, he was selected only for LDCE quota. It is not in dispute that the fourth respondent was ranking number one out of the selected candidates and he was already appointed on 12.04.2000 in the same post, under Direct recruitment quota. The reply statement filed by the respondents 1 and 2 clearly shows that the said appointment is not a bar for considering him in LDCE quota and accordingly, the fourth respondent and the petitioner herein were offered appointment by order, dated 08.08.2000. The reason assigned by the respondents 1 and 2 for placing the fourth respondent below the petitioner and the third respondent herein is that he had failed to submit his willingness on 08.08.2000 at 7.30 a.m, before the General Manager, which cannot be accepted, since the order itself was issued only on 08.08.2000.

16. The letter of the fourth respondent, dated 12.12.2005 available in the typed set, reads as follows :

> " I had applied for C/M Gr.II for direct recruitment post against circular No.001/Vig/215/HAPP(T)/99, dated 17.06.99. Having considered my application and after due process of recruitment procedure, I have been appointed to the post of C/M.Gr.II(T) by 12.04.2000 - vide F.O part II No.502, dated 18.04.2000. Accordingly, I had assumed the post by the same date. It is further stated that before my appointment to the said post, I had also applied for LDCE, C/M Gr.II (T), the result of which was published sometime in August 2000. i.e well after accepting the post by 12.04.2000. Subsequently, an order of appointment to the post of C/M Gr.II (T) under LDCE quota was offered to me vide letter No.14168/Vig/HAPP/2000, dated 08.08.2000. Since the post of G/M Gr.II (T) under direct recruitment and LDCE quota carry the pay scale of Rs.5000-150-8000 and having assumed the post of 12.04.2000, it is not understood as to how I have been placed in the bottom of the list of seniority, but whereas juniors to me in the same post and the same trade have been placed above me which is contradictory to the rules. To rectify the anomaly, I have represented my case through my representation

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dated 08.08.2000, which has not yet seen the end of the tunnel till date."

In the aforesaid letter of remainder addressed to the General Manager, HAPP, Trichy, the fourth respondent has clearly stated that he had submitted his representation on 08.08.2000, which was not considered to rectify the anomaly in fixing his seniority. It is seen from the typed set that the Joint General Manager (Admin) has sent his reply dated 20.12.2005 in No.14086/HAPP/VIG, Vigilance section to the fourth respondent, referring his letter, which reads as follows :

" Sub : Seniority position of Ch'man Gr.II/ Elect – Reg.
Ref : Your application dated 12.12.2005.
With reference to your application quoted above, it is stated that your seniority in the grade has been scrutinised with reference to SRO provisions & Rules on the subject issued by OFB from time to time. You have been placed at appropriate place in the respective seniority list as per rota-quota system.

sd/-
Jt.GM/Admin "

It is quite clear that in the aforesaid letter of the fourth respondent, dated 12.12.2005, he has referred the earlier representation, dated 08.08.2000 made by him, which was also not denied by the respondents 1 and 2 and therefore, the contention of the respondents 1 and 2 that the fourth respondent had failed to submit his willingness cannot be accepted.

17. According to the learned counsel for the fourth respondent, both the petitioner and the third respondent herein were not eligible for the appointment made under Direct recruitment quota, though the fourth respondent was eligible for both, hence, only in order to accommodate the petitioner and the third respondent for both the available vacancies in LDCE quota, the legitimate right of the fourth respondent in getting seniority has been deprived of, stating that he had failed to submit his willingness for LDCE quota and hence, he was placed below the petitioner and the third respondent under Direct recruitment quota. In the facts and circumstances of the case, the above said arguments advanced for the fourth respondent has due importance for consideration.

18. Though the respondents 1 and 2 have accepted the fact that the fourth respondent was eligible for LDCE quota and accordingly, they have issued order dated 08.08.2000 to the fourth respondent, but, without any justifiable reason, he was directed to give his willingness on the same date at 7.30 a.m, for the

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reasons best known to the respondents 1 and 2 and further, on 09.08.2000, the very next date itself, the third respondent was appointed under the LDCE quota, on the ground that the fourth respondent had failed to submit his willingness for LDCE quota. Accordingly, the fourth respondent, who was selected for both quotas and was already appointed on merits has been placed below the petitioner and the third respondent. Further, the third respondent has not challenged the impugned order passed by the Tribunal. Similarly, the appointment of the third respondent as Chargeman Gr.II (T) is not under challenge and therefore, this Court need not go into the validity of appointment of the third respondent in this writ petition and as such confined to decide whether the impugned order with regard to refixing seniority is legally sustainable or not.

19. While fixing seniority, the authorities should not ignore the principles of natural justice to be followed. By way of unreasonable tactics, the legitimate right of seniority of an employee cannot be tampered with by any authority, violating the principles of natural justice.

20. It is not in dispute that in fixing the seniority in the cadre of Chargeman Gr.II (T) , LDCE quota gets priority over the direct recruitment quota. Though the fourth respondent was selected under both the quotas and ranking number one in the LDCE quota and was also asked by letter, dated 08.08.2000 by respondents 1 and 2 to submit his willingness, it has been established that though he submitted his representation, he has been deprived of his legitimate right of seniority by adopting improper tactics and illegal procedures by the concerned authorities.

21. Considering the impugned order and the materials available on record and also the arguments advanced by both the learned counsel, we are of the view that the Central Administrative Tribunal has passed the impugned order properly, according to law, which warrants no interference from this Court under Article 226 of the Constitution of India. Hence, the writ petition fails and the same is dismissed. However, there is no order as to costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Chairman
   Union of India
   Ordnance Factories Board,
   Kolkatta.

2. The Registrar
   Central Administrative Tribunal,
   Chennai - 600 104.

+ 1 cc to Mr. P. Wilon, Asst Solicitor General of India, SR No.62765

+ 1 cc to Mr. L. Chandrakumar, Advocate SR No. 62853

+ 1 cc to M/s. Paul & Paul, Advocates, SR No.62902

SJ(CO)
SR/22.10.2007

Order in
W.P.No.18958 of 2007

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